REMARKS

In the non-final Office Action mailed May 02, 2007, claims 1-24 remain pending in this application. Claims 1-24 stand rejected. Claim 20 is objected to. With this Amendment, claims 1, 4-17, and 21-24 have been amended. Claims 3 and 19 have been withdrawn. Claims 2 and 20 stand as originally filed. No new matter has been added. Reconsideration of the present application in view of the amendments and remarks that follow is respectfully submitted.

Claim 20 Objections & Remarks

Claim 20 has been objected to due to informalities of dependency. The Examiner has suggested that claim 20 should be corrected to depend from claim 19. Applicant notes, claim 20 as originally filed contains a dependency typo and agrees with the suggestion as such was the original intent of the filed application.

Applicant has amended claim 20 to correctly state its dependency from claim 19.

Accordingly, Applicant respectfully asserts the objection of claim 20 is traversed and requests withdrawal thereof. Applicants believe that claim 20 as amended, in further view of the remarks and amendments in this response, now stands ready for allowance and requests a timely review by Examiner.

Drawing Objections & Remarks

No Drawing Objections have been made by Examiner.

35 U.S.C. §101 REJECTIONS & REMARKS

Examiner has rejected claims 9-16 under 35 U.S.C. §101 for the following reasons:

"In claim 9, in paragraph 0048 of the specification applicant has provided evidence that applicant intends the medium to include signals as such the claim is drawn to a form of energy. Energy is not one of the four categories of invention and therefore this claim is not statutory."

Applicant notes that Examiner's rejections are based on the section of paragraph 0048 reading:

"Consequently, a computer readable medium is intended to include a computer readable signal which, for example, may be transmitted over a network." (portion of paragraph 0048 of the Application).

Applicant believes Examiner has misread the statement and rejected claims 9-16 as asserting the presence of nonfunctional descriptive material that does not constitute a statutory process, machine, manufacture, or composition of matter. Applicant suggests, contradistinctively, that the statement is functionally descriptive and is logically clear when considered in view of the actual functional, logic and operational flow of the invention.

However, in order to move the Application towards issuance in a timely manner, Applicant has amended and replaced paragraph [0048] and also amended claim 9 to more specifically recite Applicant's original intention, which more specifically sets forth the intended post-computer activity involving the data signal. For example, it is the computer program embodied on the computer-readable medium which includes the data signal.

Accordingly, Applicant respectfully asserts the rejection of claim 9 is traversed and requests withdrawal thereof. As claims 10-16 depend variously therefrom, Applicant believes rejections to claims 10-16 are also now traversed. Applicants believe that claims 9 as amended, and claims 10-16, for the reasons above and in further view of the remarks and amendments in this response, now stand ready for allowance and requests a timely review by Examiner.

35 U.S.C. §103(a) REJECTIONS & REMARKS

Examiner has rejected claims 1, 9 and 17 under 35 U.S.C. §103(a) as being unpatentable over Admitted Prior Art (APA) in view of Paul, 7,185,070 (Paul). APA is understood to be a Chapter 4 entitled Packet Classification Services (June 28, 2002) produced by IBM. Dependent claims from the above claims have also been variously rejected as being unpatentable over APA, Paul and/or Sinha (7,000,237). Potterveld (5,878,431) and Goode (2004/0103110).

Regarding §103(a) rejections under APA and Paul

Applicant respectfully believes that Examiner's rejection is not precise. For instance, Examiner has stated that the APA provides a teaching for:

"...a plurality of generic application program interfaces (APIs) communicating with the at least one packet classification application and the plurality of heterogeneous network processors, the plurality of [generic] APIs for communication with the at least one packet classification application in the at least one host processor in a network processor independent manner..."

and yet immediately thereafter, the Examiner states that:

"the APA does not explicitly show a plurality of generic application program interfaces (APIs) communicating with the at least one packet classification application and the plurality of heterogeneous network processors, the plurality of generic APIs for communication with the at least one packet classification application in the at least one host processor in a network processor independent manner[.]"

For point of reference, Figure 1 of the ADA provides:

FIGURE 1. Common Type Model
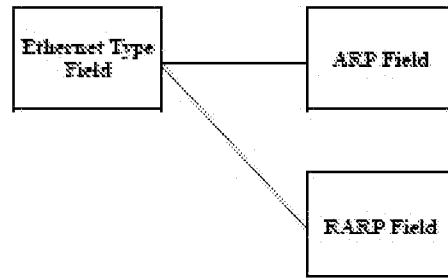
ARP Pattern = (Ethernet Type Field) && (ARP Field)

RARP Pattern = (Ethernet Type Field) && (RARP Field)

Rule = (ARP Pattern) | (RARP Pattern 1)

Applicant respectfully asserts Figure 1 of the ADA does not reflect the assertive statements of Examiner, but rather does not show any aspect of the present application, any teaching towards the present application or any information specifically pertinent. Applicant therefore asserts that as it is not possible to simultaneously assert a reference as teaching and also assert the same reference as being absent the asserted matter, Applicant asserts the rejection is faulty and is not capable of being responded to.

Applicant notes that Examiner has also asserted that Paul suggests:

"...a plurality of generic application program interfaces (APIs) communicating with the at least one packet classification application and the plurality of heterogeneous network processors, the plurality of generic APIs for communication with the at least one packet classification application in the at least one host processor in a network processor independent manner [fig 1]..."

Figure 1 of Paul is stated as being a diagram showing the G-QoS architecture of the Paul invention (Paul, col. 3, line 26.). Figure 1 does not show communication of a plurality of generic APIs with heterogeneous network processors in contradiction to Examiner's suggestion. Instead, Applicants believe Figure 1 is demonstrative of negotiators of Paul capable of communication with one another through common

communication links using a common platform and/or protocol. Further, by way of further example, Paul teaches (at col. 2, lines 54-67 and thereafter at col. 4, lines 1-1XX):

"The present invention relates to a generic quality of service ("G-QoS") protocol and architecture for user applications operating in multiple transport protocol environments. The G-QoS protocol and architecture allows applications communicating over a network to utilize a desired QoS level throughout the entire period of communication, independent of the processor architectures, operating systems, network architectures, and transport protocols utilized by the application. *The protocol can be implemented* between a client application and the socket layer of a communications channel, stores network and application data provided by G-QoS negotiators residing at both a client machine and a server machine, and can be implemented using out-of-band Internet Control Message Protocol ("ICMP") messages."

"*Communication between G-QoS negotiators 25, 30 is effectuated through G-QoS protocol 28*. Upon communicating with each other, G-QoS negotiators 25, 30 then negotiate an acceptable level of QoS that can be utilized by both the user client application 15 and server application 20, taking into account network and application parameters at the time of negotiation. [...]. *Importantly, the G-QoS protocol allows the G-QoS negotiators to communicate with each other*." (emphasis added)

Applicants assert that the invention of Paul is instructive on the protocol use across a network possibly having different network architectures or the like. Paul is not instructive on generic APIs communicating with a plurality of heterogeneous networks though, as is it is the protocol communication which is sought by Paul and not the generic APIs communication.

Examiner further asserts rejections based on reasoning of: It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to access by a variety of network architectures..." Applicant responds that the motivation of Paul is one-sided: to provide a single protocol communication capability across architectures without concern for those architectures -- and not to have access

across a variety or plurality of architectures. Examiner's other similar explanations are also set forth only due to hindsight given the present invention.

As such, given the whole of the invention of Paul, with particular focus on its inventive aspects, it is not instructive, motivational nor related to the present application. Applicants assert Paul is not instructive in the teaching of the present application.

As neither the APA nor Paul is an applicable reference, Applicants assert the basis for the rejections are traversed.

As all of the rejections are premised on the APA and Paul, Applicant respectfully asserts the a rejection of any of the claims as presented in the original application under 35 U.S.C. §103(a) is without merit as: (1) the cited references do not disclose or teach the present invention; (2) if the present invention were adapted to the teachings of the cited art, the present invention would not operate as claimed; (3) there is no prime facie basis for a rejection of obviousness (see note 1 below)[1]; and (4) MPEP §2141 is inapplicable (see note 2 below).[2]

ADDITIONAL REMARKS

Applicant has through this Amendment and Response sought to continue to move the prosecution of the present application forward, however, by amending claims in the present application to more specifically claim the present invention.

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[1] According to the Supreme Court ruling in Graham v. John Deere, 383 U.S. 1 (1960), in making a case for obviousness, the Examiner must: (1) determine the scope and content of the prior art; (2) ascertain the differences between the prior art and the claims at issue; (3) resolve the level of ordinary skill in the pertinent art; and (4) evaluate evidence of secondary considerations. These principles have just been reconfirmed in KSR Int'l Co. v. Teleflex Inc., No. 04-1350 (Slip Op. April 30, 2007). In KSR Int'l Co., the U.S. Supreme Court restated the requirements for a finding of obviousness. Encouraging the application of common knowledge and common sense, the Court took care to guard against hindsight bias and ex post reasoning and to distinguish the predictable from the unpredictable arts ("If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability." [Emphasis added.]).

[2] When applying 35 U.S.C. § 103, the following tenets of patent law must be followed: (1) the claimed invention must be considered as a whole; (2) the references must be considered as a whole; (3) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (4) reasonable expectation of success is the standard with which obviousness is determined (MPEP §2141).

In particular, to claim 1, 9 and 17, Applicant has made amendments to include the (1) use of a plurality of definable rules for determining packet classification behavior in a predetermined priority sequence and (2) the plurality of generic APIs to further include a define API for allowing a rule of the plurality of definable rules to be defined.

Applicant asserts none of the cited prior art references cited by Examiner are instructive or include these additional refining aspects. As all other claims in the present application depend variously therefrom, Applicant asserts all claims now stand ready for allowance.

FINAL REMARKS

For the reasons stated hereinabove, Applicants respectfully assert that all claims, as presented in the Amendment, stand ready for allowance and request a Notice of Allowance be timely provided.

Applicants attorney believes that this application is in condition for allowance. Should any unresolved issues remain, the Examiner is invited contact the undersigned at the telephone number indicated below.

Respectfully submitted,

  September 4, 2007   /JOSEPH A. SAWYER, JR./
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